

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MAUREENA SHANEE THOMPSON,

Defendant and Appellant.

A103611

(Marin County
Super. Ct. No. SC128495A)

Defendant pleaded guilty to possession of a stolen check with intent to defraud and receiving stolen property. The charges were based largely on her passing a check on which she had forged the account holder's signature. Defendant contends that the court erroneously ordered as conditions of probation that she abstain from the use of alcohol, submit to chemical testing, and attend Alcoholics Anonymous meetings. We affirm.

BACKGROUND

Defendant stole checks from two persons, one of whom owed defendant money. When the debtor did not pay on time, defendant forged his signature and the signature of the second person on three of these checks and attempted to cash them. After defendant was successful in cashing one of the three, her crime was detected. When she was detained, defendant was found in possession of a blank check from yet a third person, a stranger to defendant. Defendant pled guilty to one count of possession of a completed check with intent to defraud (Pen. Code, § 475, subd. (a)) and one count of receiving stolen property. (Pen. Code, § 496, subd. (a).) She was placed on probation.

Defendant's criminal history is fairly substantial, but much of it dates from her youth and early adulthood. In the past few years, her crimes and violations were primarily traffic-related, with three convictions for driving under the influence. The most recent of the DUI convictions was approximately 16 months prior to her present crimes. In connection with that conviction, defendant was sentenced to probation and participated in an alcohol abuse program.

Defendant reported to her probation officer that she first began drinking during adolescence, eventually drinking heavily between the ages of 15 and 25—in other words, at least until 1999. Her three arrests for driving under the influence, however, occurred after that date, suggesting that defendant's problems with alcohol persisted well past age 25. Defendant's only recorded treatment for alcohol abuse occurred after her third DUI conviction, when she attended Alcoholics Anonymous for a time. Based on these facts, the probation officer concluded that "Defendant's . . . use of alcohol, appears to have been excessive and not properly addressed. . . . An outpatient program would certainly be of a great assistance to the defendant in obtaining and maintaining sobriety for the long haul." Letters and reports from her employers suggested that she was successfully holding down one full-time and an additional part-time job. She was also supporting a young daughter and attending the local community college.

At sentencing, the probation officer explained her reasoning in recommending that defendant be prohibited from consuming alcohol and required to attend Alcoholics Anonymous meetings for the duration of probation: "There had been a history of alcohol abuse that has come up even fairly recently. She admitted to consuming excessively. We thought it would be in her own best interest to impose that condition as a means to help her get through on probation." The trial court imposed as conditions of probation that defendant be prohibited from consuming alcohol, that she attend three to five Alcoholics Anonymous meetings weekly, and that she submit to chemical testing for alcohol at police request.

DISCUSSION

Defendant objects to the alcohol-related probation conditions as overbroad and unrelated to the current offenses.

Pursuant to Penal Code section 1203.1, the “courts have broad discretion to impose [probation] conditions to foster rehabilitation and to protect public safety [Citations.] . . . The trial court’s discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute. In addition, we have interpreted Penal Code section 1203.1 to require that probation conditions which regulate conduct ‘not itself criminal’ be ‘reasonably related to the crime of which the defendant was convicted or to future criminality.’ (*People v. Lent* [(1975)] 15 Cal.3d 481, 486.)” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120–1121.) A probation condition is reasonably related to future criminality if there is “a factual ‘nexus’ between the crime, defendant’s manifested propensities, and the probation condition. [Citations.] There must be some rational factual basis for projecting the possibility that defendant may commit a particular type of crime in the future, in order for such projection to serve as a basis for a particular condition of probation.” (*In re Martinez* (1978) 86 Cal.App.3d 577, 583.) As with other discretionary decisions, we cannot substitute our judgment for that of the sentencing court, and we will uphold the sentencing court’s exercise of discretion unless appellant demonstrates that the decision is “arbitrary or capricious or “ ‘exceeds the bounds of reason, all of the circumstances being considered.’ ” [Citations.]’ ” (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121.) In evaluating the reasonableness of a probation condition, “[t]he probation report is generally a proper source of information upon which judicial discretion may be exercised when a defendant is arraigned for sentencing.” (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 725, overruled on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 34–35; see also

People v. Baumann (1985) 176 Cal.App.3d 67, 81–82; *People v. Rivera* (1989) 212 Cal.App.3d 1153, 1160.)¹

There is no question that defendant has abused alcohol in the past. Even after the time of her conceded problems, defendant's inability to regulate her alcohol intake responsibly led to three separate arrests and convictions for driving while under the influence, the most recent only 16 months prior to her current offense. The fact that defendant told the probation officer that her alcohol abuse stopped at age 25—prior to any of the DUI convictions—suggests that, at best, defendant has not come fully to terms with her problem.

The circumstances of defendant's crime are not as innocent as she portrayed them to the court prior to sentencing. Although defendant justified her offense as self-help debt collection, she attempted to cash checks whose value exceeded the amount she was owed. Moreover, one of the checks was drawn on the account of a person who was not indebted to her, and she was found in possession of a blank check from yet a third person. Defendant was unable to explain the presence of that blank check in her purse. The only inference to be drawn is that, whatever the justification for her current offense, defendant was at least tempted to actions that were more culpable than debt collection.

The motive for defendant's actions appears to have been financial pressure. The probation report noted that defendant was living beyond her means. As defendant herself told the court, she took the extraordinary action of stealing and cashing the checks because she was owed money and "it was rent time [and] my bills were due."

We can only conclude that the key to keeping defendant from committing further criminal acts is to insure that she has the financial wherewithal to pay her bills. Alcohol is a threat to that objective in at least two respects. First, alcohol abuse serious enough to

¹ Defendant did not challenge any of the statements in the probation report in the trial court. As a result, she has waived any contention that the information contained in the probation report was inaccurate. (*People v. Scott* (1994) 9 Cal.4th 331, 351–352, citing *People v. Chi Ko Wong, supra*, 18 Cal.3d 698, 725; see also *People v. Monreal* (1997) 52 Cal.App.4th 670, 679–680.)

interfere with daily life can lead to job absences and termination. Second, as has been noted in prior cases, alcohol leads to a lowering of inhibitions, making it more difficult to lead a law abiding life. (*People v. Beal* (1997) 60 Cal.App.4th 84, 87.) Although these theoretical risks might not be sufficient to justify imposing on every probationer a condition banning alcohol use, the risks are not merely theoretical in defendant's case. Her history suggests that she is particularly susceptible to alcohol abuse. While defendant may have successfully completed a program to prevent future abuse in connection with her last DUI conviction, those prone to alcohol abuse often find permanent control insidiously difficult.

Defendant's reliance on *People v. Burton* (1981) 117 Cal.App.3d 382 is misplaced. In *Burton*, the defendant had been convicted of severely beating a coworker while at work. There was no evidence that alcohol played any role in the beating or that defendant had a history of alcohol abuse. As the court noted, "it is especially significant that there is no evidence in the record that appellant had ever been convicted of an alcohol-related offense and/or that he had manifested a propensity to become assaultive while drinking." (*Id.* at p. 390.) The probation condition denying alcohol was, on the record before the court, gratuitous. In contrast, defendant has a conceded history of alcohol abuse that has led directly to three criminal convictions. The trial court was acting reasonably in concluding that the best way to prevent defendant's demonstrated propensity to alcohol abuse from creating conditions that would encourage future criminal conduct was to forbid alcohol for the duration of defendant's probation and to require defendant to meet with a support group to assist her compliance with this condition.

DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Stein, J.